



## DELHI GOVERNANCE: A CASE OF POLITICAL ONE-UPMANSHIP IN INDIA

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### ABSTRACT

The governance of capital cities is complex. It becomes more complex when a capital city belongs to a federal nation. Federal capital cities need to achieve a just and proper balance between the interests of the residents of the capital area and the interests of the nation. Various administrative models have been adopted by various federal polities to achieve this fine balance. India, too, has adopted its unique administrative model to govern its capital city—Delhi. How far has India been successful in achieving the fine balance between its federal interests and local interests? Are the democratic aspirations of residents of Delhi suffering due to political competition? Can any administrative model survive when games of political one-upmanship are being played to create an amputated elected government, with miniscule powers and miniscule responsibilities? The paper attempts to answer such questions.

**KEYWORDS:** Delhi Executive, Federal Capital Cities, Government of National Capital Territory of Delhi (GNCTD), National Capital Civil Service Authority (NCCSA), National Capital Role.

### INTRODUCTION

The governance of capital cities is complex. “The capital is by definition a seat of power and a place of decision-making processes that affect the lives and the future of the nation ruled, and that may influence trends and events beyond its borders.” (Gottmann 1983: 88). A capital city differs from other cities as it enjoys being the centre of the nation. This centrality is defined in terms of being, not necessarily, a commercial nucleus but more essentially, in terms of being a political nucleus providing a special site for the concentration, administration, and representation of political power. It is home to both the national legislature and the executive. It also “performs the role of a link with the centres of other nations. It represents a hinge between the domestic system and the outside, between national and foreign interest.” (Nilson 1983: 93). The political significance of the capital city attracts varied groups like “civil servants, diplomats, lobbyists, newsmen and, of course, politicians, who are not to be found in similar numbers in other than capital cities.” (Gottmann: 88). Correspondingly, the resident population of a capital city reflects national diversity at its best. Accordingly, a capital city has to develop such state-of-the-art infrastructure which would be commensurate with its significance. In short, a capital city is the face of the nation. It depicts “the qualities a state wishes to portray to the larger world.” (Milroy 1993: 86) It has to look and act differently than other cities. Therefore, how the capital city is governed becomes an important question.

The governance of federal capital cities is more complex. Rowat points out three problems faced by the federal capital cities:

The first is a problem common to most large cities of the modern world: the provision of government adequate for a whole metropolitan area--the centre of the city plus its suburbs. Secondly, common to all capital cities is the need to achieve a just and proper balance between the interests of the local residents of the capital area and the interests of the nation. Thirdly, arising from the nature of federalism, and as such a problem peculiar to federal capitals, is that of giving the federal government sufficient control over its own capital and

preventing the capital from being dominated by one of the states. (Rowat 1968: 345)

In other words, the conflict arises between the national interest vs. municipal autonomy or the “national capital role” vs. the “local role.” It means that the federal government wants to control and develop the capital in the interests of the nation, while the people of the capital naturally wish to govern themselves to the greatest extent possible. The national capital in a federal country, if treated in the same way as any other city, would normally fall under the jurisdiction of a constituent state or provincial government, thereby denying the national government any role in the functioning of its capital.

“Federal interest in capital cities tends to revolve around public safety (protecting national leaders and foreign diplomats), land use (making the capital a beautiful showcase for the country), and delivery of services to the extent that they have an impact on the operation of the federal government (such as transportation). The policies that the federal government adopts toward its capital city have an important impact on the relation between the federal government and local authorities as well as important implications for the finances of the capital city.” (Slack & Chattopadhyay 2009: 4)

On the other hand, the argument to have a form of government representing the aspirations of the residents of the federal capital city is based on democratic ideals. Belonging to a federal democratic polity naturally implies that each citizen has the right to vote and elect one's provincial government, other than the Central government. This right should not be snatched away from those citizens who happen to reside in the federal capital city.

Owing to the abovementioned problems, various federal polities have experimented with different administrative setups for their capital cities. These can be loosely classified under the following categories:

1. “The capital city is under the jurisdiction of one of the

- states in the federation. (Example- Ottawa)
2. The capital city is itself one of the states in the federation. (Example- Vienna)
3. The capital city is governed by the federal government. (Example- Washinton D.C.)” (Rowat: 345-346)

It is worth mentioning here that each institutional design for federal capital cities would be appropriate only in its contextual setting. No doubt, each design mentioned above aspires to achieve a fine balance of federal interests and local interests. However, when theory is put into practice, sometimes, achievement of this balance is lost due to the detrimental effects of the politics of the day. The present governance of the federal capital of India (Delhi) substantiates the argument.

### Federal Capital of India: New Delhi

The capital of federal India is New Delhi (or in common parlance is called Delhi). Delhi is officially known as the National Capital Territory of Delhi or (NCT) of Delhi. Its administrative setup lies somewhere in between the second and the third categories mentioned above.

Constitutionally speaking, Delhi is a Union Territory within the Indian federal arrangement (with aspirations to become a state one day). In India, a Union Territory (UT) is a designated federal territory which is administered by the Central government. The government governs a UT with the help of an administrator known as a Governor. Thus, generally, a UT does not have an elected legislature and a provincial government. However, Delhi is an exception. It is more than a Union Territory as it has a special status. Delhi, along with Puducherry, have been granted partial statehood by being allowed to have an elected legislature and a provincial government. Only these two UTs have representations in the Rajya Sabha.

The dilemma of the policymakers regarding Delhi is obvious from the study of its administrative history. Delhi has been a site of experimentation and contestation where the policymakers have not been too sure of what they wanted to have – centralised control over the national capital or to fulfil the political demands for self-government. The members of the Constituent Assembly had extensively debated whether to have centralised control over the national capital or to fulfil the political demands for self-government. (Constituent Assembly Debates, 1999) Thus, Delhi's governance structures have undergone important changes from time to time, significantly concerning the primary objectives of ensuring efficiency in service provision and delivery as well as responsiveness to citizen needs and developmental priorities.

In 1952, Delhi was provided with an elected legislative body which constituted a council of ministers, headed by a chief minister. However, the jurisdictional competence of the body was very limited as it was not allowed to pass orders on many subjects such as public order and police. The legislative body also did not have any financial powers. The only consolation was that the legislative body was popularly elected.

In 1957, Delhi experienced a change in its administrative structure. The legislative body of Delhi ceased to exist. Instead, the Municipal Corporation of Delhi i.e. (MCD) was created which is presently the local government of Delhi.

In 1966, Delhi again got back its elected representative body in the form of Metropolitan Council. However, it had no powers and was only an advisory body to the Lieutenant Governor of

Delhi. It was abolished in 1990.

The 69th Amendment Act recognised the inherent rights of the people of Delhi to have an elected and responsible government. Thus, a directly elected government was established known as the Government of National Capital Territory of Delhi (GNCTD). According to the Amendment Act, this new administrative arrangement is extended to “ensure stability and permanence” and “to give the national capital a special status among the Union Territories.” (The Constitution (Sixty-ninth) Amendment Act, 1991).

Article 239 AA of the Amendment Act declared the Union Territory of Delhi as the National Capital Territory of Delhi having a Legislative Assembly with directly elected members to be decided by Parliament. The Amendment Act states that “The Legislative Assembly shall have the power to make laws for the whole or any part of the national capital territory with respect to any of the matters enumerated in the state list or in the concurrent list” which applies to union territories except “with respect to entries 1, 2 and 18 of the State List and entries 44, 65 and 66 of that List in so far as they relate to the said entries 1, 2 and 18.” (The Constitution (Sixty-ninth) Amendment Act, 1991).

The Amendment has brought Delhi near to being a state. However, constitutionally Delhi is still not a state.

### ADMINISTRATIVE STRUCTURE OF DELHI

Based on the 69<sup>th</sup> Amendment Act, presently the administrative structure of Delhi consists of three levels of government. Firstly, there is the federal/ national government. Then, there is the GNCTD or the state/ provincial government. And thirdly, there are two local governments i.e. the MCD (Municipal Corporation of Delhi) and NDMC (New Delhi Municipal Council). MCD is jointly governed by the union government and the GNCTD. NDMC is governed solely by the Union government.

### POWERS OF GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (GNCTD)

“Delhi serves as a unique example of the dual system of governance which characteristically combines executive federalism with partial legislative decentralisation.” (Nandi 2015: 131) It is partial decentralisation in several respects. GNCTD has very limited competence in matters of legislation, execution, and finances. The competence of the Delhi Legislature can be described as follows:

1. *Having no competence or zero competence* on important subjects like public order, police, and land. These three subjects provide the union government with overriding powers to influence the state's competence on the rest of the entries of List II.
2. *Conditional Competence* on treasure trove, courts and fees;
3. *Limited Competence* over other subjects of the State List where it has a limited field of operation, that too with prior sanction or consent of the union government; and
4. *Concurrent Competence* on the subjects of List III where its competence is subject to the test of repugnancy and overall primacy of union laws and occupancy of the field by the Union Parliament.” (Nandi, 2015, p. 132).

In other words, the Delhi Government has no control over its police force, land, and development planning. Leaving aside these subjects, GNCTD does not have exclusive jurisdiction over the rest of the subjects of the State List. Lieutenant Governor (LG) has a coign of vantage regarding many State List

subjects. Similarly, the financing authority of the Delhi Government is severely limited due to the provisions of Article 286 (sale and purchase of goods, interstate trade and commerce, import and export of goods, etc.), Article 287 (taxes on the consumption and sale of electricity by the union government), Article 288 (tax in respect of any water or electricity stored, generated, consumed or sold by any authority established by parliament). The legislative authority is further curtailed by the financial power of the LG because every financial bill or amendment moved in the Delhi Assembly requires his recommendations. LG can withhold any Delhi bill or reserve a bill for the consideration of the President of India.

“Clearly due to dual system of governance and dichotomous placement of *Delhi as Union Territory and Delhi as semi-state*, it has an assembly, but does not have adequate competence -- either legislative or financial or administrative. It has extremely limited legislative autonomy and practically no financial or administrative authority.” (Nandi:133)

### POWERS OF THE CENTRAL GOVERNMENT OVER DELHI

According to Article 239 of the GNCTD Act, 1991, the Lieutenant Governor of Delhi has been appointed as the 'administrator' of Delhi. Being the representative of the Central Government in Delhi administration, he has a very powerful position vis-à-vis the Chief Minister of Delhi. Here we find a departure from the conventional wisdom on the cabinet form of government.

Every state in India has a Governor who is appointed by the Central Government. The Governors of the states have nominal powers as compared to their respective Chief Ministers. However, the Governor or the Lieutenant Governor of Delhi has been bestowed with such discretionary powers which makes him the real decision-maker in Delhi instead of the Chief Minister of Delhi. This is contrary to the conventional wisdom on the cabinet form of government wherein the democratically elected individual is the real executive, and the appointed individual is the nominal head.

Apart from the towering presence of LG, GNCTD does not have complete territorial jurisdiction over Delhi. The New Delhi Municipal Council (NDMC) is the seat of India's central authority, and the Central Government has complete jurisdiction over it. Being a council, it has its own identity and authoritative signification with defined functions, taxing powers, and autonomy of decisions.

The Government of National Capital Territory of Delhi (Amendment) Bill, 2023 and the Gradual Erosion of Powers of an Elected Government

The tussle for power between the Central Government and the Delhi Government began in 2015 when AAP (Aam Aadmi Party) came to power in Delhi. Since 2015 there have been repeated attempts by the Central Government (BJP-led NDA) to erode the powers of GNCTD through various amendments in the GNCTD Act of 1991. It is strange that a political party (BJP) which had a long history of demanding full statehood for Delhi, would unabashedly and unceasingly use its position to usurp the competencies of the Delhi Government. These competencies were granted by the Constitution of India to GNCTD through the 69<sup>th</sup> Amendment Act. Such moves of usurpation also prove how political parties in India do a volte-face and change their stand completely when they come to power.

The first onslaught on the powers of GNCTD came from the NDA government in 2015 when the Ministry of Home Affairs (MHA) issued a notification taking away the control over 'services' from the Delhi legislature and declaring that the LG is the 'government of Delhi.' However, in July 2018, the Supreme Court gave erudite and elaborate judgments regarding the powers of GNCTD and LG. A five-member bench headed by Justice Deepak Misra gave a resounding judgement in favour of the elected Delhi government. Basing their rationale on collaborative federalism, the Bench declared that “pragmatic and collaborative federalism will fall to the ground if the union has overriding executive powers even in matters for which Delhi Legislative Assembly has powers.” (SC Resolution of Delhi, 2018). In the 237-page judgement, the Court held that the Chief Minister and not the Lieutenant Governor (LG) is the executive head of the Delhi government. It accepted that the elected government of Delhi had legislative and administrative powers over 'services.' The bench further observed that “...status of the LG is not that of a governor of a State, rather LG is an administrator in a limited sense.” (Misra's CJI's Majority 2018). Regarding the relationship between the LG and the Chief Minister, the Bench opined that the LG should play the role of a facilitator rather than that of an adversary. He must act on the “aid and advise” of the council of ministers of Delhi. Thus, in this judgement, the Supreme Court attempted to lay down the broad guidelines to limit the potential conflicts that might arise in future between constitutional functionaries responsible for running the administration in Delhi.

In the light of the above-mentioned judgement, the Central government decided to amend the law, rather than implement it as interpreted by the judiciary. Consequently, the Central Government was successful in reducing the powers of GNCTD through the GNCTD (Amendment) Act, 2021 which was passed by the Parliament. The purported objectives of the Act included enhancing public accountability and easing out technical ambiguities related to everyday administration in Delhi. Broadly speaking, the Amendment Act focussed on the following:

1. It reiterated that the government of Delhi means “LG”.
2. The rules of the Delhi Assembly shall not be inconsistent with the rules of the Lok Sabha. Through this provision, the Central government took away the inherent right of the Delhi Legislative Assembly to function independently. It is to be noted that framing the rules to conduct its proceedings is a part of the privilege each house of a popularly elected legislature enjoys.
3. The Amendment Act also prohibited the Delhi Legislative Assembly from making any rule to enable itself or its committees to consider the matters of day-to-day administration of the NCT of Delhi and conduct any enquiry about administrative decisions. This provision sounded the death knell of the principle of executive accountability towards the legislature in Delhi's governance structure.
4. The Amendment also gave wide powers to LG to reserve Delhi Bills for the consideration of the President/ Central Government.

On careful perusal, the GNCTD (Amendment) Act, 2021 was meant to amputate the executive arm of the Delhi Government. The government's powers were already circumscribed. But even those powers were snatched away; thus, making the votes of millions of voters of Delhi inconsequential.

The third move by the Central Government to render the Delhi Government inoperative so that the AAP Government would



lose its face in front of its voters is the recent amendment – The Government of National Capital Territory (Amendment) Act, 2023.

Amidst severe criticism from civil society and opposition parties, the NDA Government was successful in getting the amendment bill passed in Parliament in August 2023. The infinitesimal powers of the Delhi Government were further downsized by this Amendment Act in the following ways:

1. The Act creates a National Capital Civil Service Authority (NCCSA), thereby removing Entry 41 (services) of the State List from the ambit of the Delhi Government. The three-member NCCSA would consist of one elected representative (Chief Minister of Delhi) and two Union-appointed bureaucrats (Chief Secretary and Principal Secretary-Home). Decisions in the NCCSA will be made through majority voting, which implies that the two bureaucrats can easily overrule the elected representative. Moreover, the decisions can be taken in the absence of the Chief Minister since the quorum of the meeting is two members. Also, the decisions of the authority will be vetted through the LG.

NCCSA will be responsible for “(I) transfers and postings, (ii) matters related to vigilance, (iii) disciplinary proceedings, and (iv) prosecution sanctions of Group A of All India Services (except Indian Police Service), and DANICS.” (PRS Legislative Research 2023).

This provision of the Act has been criticised the most. Creating an authority where the bureaucracy will have an upper hand over elected representatives goes against the norms of the cabinet form of government and bureaucratic accountability. In fact, in the recent 2023 judgement (Government of NCT of Delhi vs. Union of India), the Supreme Court elaborated on the rationale of keeping the 'services' under the control of the Delhi Government.

“It said that democratic government rests on a triple chain of accountability: (i) civil servants are accountable to ministers, (ii) ministers are accountable to legislatures, and (iii) legislatures are accountable to the electorate. It observed that a democratically elected government must be able to have control over and hold accountable public officers posted in the service of their government. By severing the first link of the triple chain of accountability,” (PRS Legislative Research, 2023) the Act “may be contradicting the principles of parliamentary democracy.” (PRS Legislative Research, 2023).

2. The Amendment Act seeks to increase the powers of LG vis-à-vis the Chief Minister by giving him 'sole discretion' in matters which have been delegated to him by law.

Another provision that makes a mockery of the principle of cabinet form of government is about the disposal of the matters by a Delhi minister. A Minister of Delhi government can issue a standing order only in consultation with the concerned Department Secretary. “Moreover, this provision enables department secretaries to directly bring certain matters to the LG, Chief Minister, and Chief Secretary, without consulting the concerned minister. This would break the usual chain of command as issues related to the ministry would have no input from the concerned minister. This also may go against the principle of collective responsibility of the cabinet.” (PRS Legislative Research 2023). Elaborating on the argument, Yashwant Sinha, an ex-

member of BJP wrote that “under the guise of “illegality”, the secretary can refuse to implement any and every ministerial direction. He can completely disregard the development agenda that people voted for. The Minister's directions are no longer binding on the officers, which will lead to widespread defiance and insubordination by the bureaucrats. This also strikes at the very root of Indian civil services, which are embedded in discipline and integrity.” (Sinha 2023). No doubt, the Centre will ensure that its appointed bureaucrats create roadblocks so that the elected representatives of Delhi will not be able to function effectively.

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The will of the people (expressed through the elected members of the Delhi Legislature and Delhi Executive) has been guillotined and the façade of a 'democratic' government is being kept by having an appointed person at the helm of affairs in Delhi. Hence, in the guise of 'good and smooth governance', “the administration of governance will now be a sanitised process bereft of any legislative deliberation. In other words, the people's assembly was a hindrance to the welfare of the people.” (“Democratic Government by One Person” 2021:7)

The Central government has consistently made efforts to control the constitutionally mandated jurisdiction of GNCTD. The NDA government has flagrantly misused its position to win over Delhi. Both political legitimacy and political propriety have been breached. Instead of an electoral win, NDA has sought to win Delhi through the backdoor. By demolishing the power-sharing arrangement under the Constitution it is making every effort to frustrate the Delhi government (read AAP). As it stands today, GNCTD's exclusive domain is effectively destroyed and there is nothing much for the elected Government of Delhi to govern.

This also implies that 'collaboration' – one of the basic premises of Indian federalism, has been destroyed in the case of Delhi—which has a unique federal identity in India's federal structure. Article 239AA was included in the Constitution with the idea that the Central government and elected regional government of Delhi would co-exist peacefully, respect federal sanctity and let such a governance structure fulfil both the aims

of national interest and municipal autonomy. As P. Chidambaram mentioned in an interview, "AAP is not the first government in the National Capital Territory of Delhi. There have been previous governments... If Article 239 AA has worked so far, what has changed that it would not work with the AAP government?... Article 239AA has worked for many years and there is no reason that it cannot work anymore." (Joshi 2023). The smooth functioning of previous elected governments of Delhi belies the notion that cooperative federalism principles do not fit Delhi because it is a federal capital.

A possible solution to the present stalemate between the two governments in Delhi may be that the GNCTD should cease to exist. An amputated GNCTD will not be able to fulfil the aspirations of the Delhi residents. If the real power lies with the Central government and not with the GNCTD, then why even have an elected government at the state level at all? With three levels of government, Delhi has too much governance. Maybe to have better governance, a lesser number of governments are required. Being the seat of the Central government, it must be under the Central government's jurisdiction. Let Delhi remain under the control of the Centre and a Union Territory in its full essence as it was before 1991. Let the residents of Delhi give up aspirations of municipal autonomy and pay the price of living in a federal capital.

## CONCLUSION

Governance of federal capital cities, being unique amongst other capital cities, requires special considerations. The most important problem is how to find an ideal balance between federal and local interests. No size fits all. Therefore, the search for this ideal balance has not led to the same solutions in the federal nations. There is no ideal model to emulate, and each federal nation needs to work out its institutional design that satisfies its context the most. Over the years, seemingly, India had attained a fine balance between the two conflicting interests. However, no 'almost-ideal' model can survive the onslaught of political manoeuvring.

For a long time, Delhi remained a site of experiments where policymakers could not come to a consensus regarding an administrative model fit for a federal capital city. A reasonably suitable model was adopted for governing Delhi after 1991. This model is an attempt to provide a harmonious balance of specific jurisdictions to three levels of government in Delhi. Till 2016, this model had worked quite well. However, the insistence of the ruling party at the Centre to encroach on the legitimate jurisdiction of the Delhi government, just because it is run by an opposition party, has destroyed the balance of power envisioned by the 1991 Amendment Act. The consequences of various amendments to circumscribe the powers of an elected government may be felt in the Indian polity's federal structure at large.

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